Supreme Court, U. S.
FILED
JUN 5 1980
MICHAEL RODAK, JR., CLERK

No. 79-1676

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

ALAN J. WHITE,

Petitioner,

v.

ARLEN REALTY & DEVELOPMENT CORP.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY TO THE RESPONDENT'S BRIEF IN OPPOSITION

ALAN J. WHITE
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Petitioner,
in propria persona

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PRELIMINARY STATEMENT

The petitioner, Alan J. White, is submitting this brief pursuant to Rule 24(4) in reply to the arguments first raised in Arlen Realty & Development Corp.'s Brief in Opposition.

Arlen's opposition focuses on the facts rather than the law 1/, and would have this Court believe that White does not deserve an attorney's fee because (1) he did not claim or prove that he sustained any actual damage, (2) he initiated this lawsuit for the sole purpose of generating an attorney's fee and (3) he did a poor job at and before trial. This reply will examine Arlen's claims briefly.

REPLY ARGUMENT

1. White is a Bona Fide "Private Attorney General"

White commenced this lawsuit and three similar ones in May 1972. As stated by Arlen (at 3), White did not claim or prove that he sustained any actual damage as a result of Arlen's violations of the Truth in Lending Act. But, as Arlen failed to state, the Truth in Lending Act in 1972 did not provide for the recovery of actual damage. It was amended in 1974 (after the trial) to so provide, and White subsequently asked for actual damages. 2/

Arlen asserts (at 4 and 11) that White was not serving in this litigation as a "private attorney general", but was prosecuting this suit for the sole purpose of generating an attorney's fee. Arlen's contention is similar to the District Court's accusation mentioned in White's petition at 6:

> Ultimately, the District Court accused White of being motivated by personal considerations, rather than a desire to serve as a private attorney general, and utilized that accusation as a footnote reason for denying White's claim on the merits. 347 F.Supp. at 157, n. 5. White was able to prove that his motive in serving as a private attorney general was pure, and he introduced evidence in the record

1/ White hereby adds the following citation to his argument on the question of subject matter jurisdiction: 9 Moore's Federal Practice 204.11 (Rel. 46 - 3/80 Pub. 410).

2/ Arlen's quotation (at 6) of White's brief to the Court of Appeals omits the following underscored words: "Accordingly, the Plaintiff respectfully requests the Court of Appeals to . . . (2) permit him to recover the non-taxable costs of this litigation either as part of the attorney's fee or as 'actual damage' pursuant to 15 U.S.C. § 1640(a)(1)".

to prove that fact.

The argument that follows is a verbatim repetition of the pertinent part of White's Motion for New Trial and Other Relief in the District Court, that contained such proof and served as the basis for the ultimate reversal of that court's decision on the merits. The only unmarked changes conform references to the appendix pages, and footnotes to the numbering sequence, of this brief:

* * *

Plaintiff's "suspect" motive

It is apparent from the Court's virtual total acceptance of the Defendant's position, and its total failure to acknowledge any of the arguments underlying the Plaintiff's position, that the Court's decision is based in large part on its belief that the Plaintiff is pursuing a personal vendetta and, conversely, is not acting as a private attorney general under the Truth in Lending Act. Nothing could be further from the truth,

and the Plaintiff hereby makes a complete and unqualified denial.

Beginning on page 8 /374 F.Supp., at 1567, the Court publishes in full the Plaintiff's letter to the Defendant dated February 17, 1972, complaining about certain goods and services. In a footnote on page 10 /374 F.Supp., at 1577 the Court states that the "plaintiff's motive in proceeding in this case as a private attorney general is suspect" in view of the fact that he did not commence this litigation until after that complaint arose. And on page 16 /374 F.Supp., at 1607 the Court says,

> "Plaintiff made no complaint to nor claim against defendant concerning the inadequacy of the identifying language in question until after a dispute arose as to the handling of his orders in late January or early February 1972 and the quality of the merchandise then purchased. At the time he or his wife made all the purchases involved in this case, plaintiff was well aware of the provisions of the Truth in Lending Act, as he was then personally involved in litigation in the District of Columbia in which he sought to recover civil penalties for alleged violations under § 1637(b) of the Act. White v. Central Charge Service, Inc., 285 A.2d 305 (D.C.App.

1971). His dissatisfaction with the identifying language used at Korvettes Rockville store apparently had little to do with the filing of these suits."

The Court thus builds up its case against the Plaintiff on the basis of two facts, and two facts alone: (1) The Plaintiff prosecuted a prior lawsuit under the Truth in Lending Act. And (2), the Plaintiff's complaint concerning goods and services arose prior in time to the commencement of this litigation. From these facts the Court infers, among other matters, (page 16) /374 F.Supp., at 1607 that from the time of his prior litigation the Plaintiff was cognizant of all of the ramifications and implications of the Truth in Lending Act including, specifically, his right to sue on the issues which he raises in this litigation, and (page 11) /374 F.Supp., at 1577 this litigation was not commenced earlier because the Plaintiff was satisfied with his course of dealing with the Defendant. Apparently it did not occur to the Court that the Plaintiff would

not have returned his charge cards in February 1972 if he were pursuing a personal vendetta and if he had been fully aware of his rights under the Truth in Lending Act. Instead, the Plaintiff would have increased his charge account activity so that his eventual lawsuit against the Defendant would have embraced many more than twelve transactions -- so many more that he could not conceivably have remembered what he purchased in very many of them.

The point is that the Court erred in its impermissible piling of inferences on inferences. The Plaintiff has steadfastly maintained that the complaint which he asserted in his letter of February 17, 1972, has nothing to do with this litigation, and that the origin of this litigation has nothing to do with the merits. 3/ This is demonstrated as follows:

3/ As discussed infra, the Defendant stopped billing the Plaintiff in March 1972 and was not billing him when the litigation was commenced in May 1972.

The Court correctly found in a footnote on page 15 /374 F.Supp., at 1607 that the Plaintiff's first lawsuit against Central Charge involved "other questions under § 1637(b)." During oral argument on October 29, 1971, a judge of the Court of Appeals caused the Plaintiff to read aloud each of the ten disclosure items of that provision and to state whether he claimed a violation of each particular item. That was both a traumatic experience for the Plaintiff and the first time that he read Subsection (b)(2) with the thought of possible violation, but the thought immediately passed from the forefront of his mind as he and the Court of Appeals turned to Subsection (b)(3).

Late in April 1972, after all the operative facts pertinent to this litigation had occurred, and after the Plaintiff had returned his credit cards to the Defendant, the Plaintiff read a "Letter" under the heading "Undescriptive billing" in the May 1972 issue of Consumer Reports. (See

26a-27a.) The "Letter" caused the Plaintiff's thoughts to flash back to the time of the oral argument; and it also caused the Plaintiff to reread carefully his statutory, regulatory and other materials pertaining to the Truth in Lending Act. The Plaintiff was then generally dissatisfied with the quality of identification provided by various issuers of credit cards, particularly the issuers of so-called "bank" credit cards where merchants (not generally under the control of the issuers) would frequently identify merchandise as "merchandise", or attempt no identification whatsoever. As a result of such dissatisfaction and his further studies initiated by the "Letter", the Plaintiff developed the concept of litigation under § 1640(a) to obtain better identification.

On April 25, 1972, the Plaintiff wrote a letter to Consumer Reports (28a-30a) concluding,

> "You . . . caused me to realize that the sooner consumers cause merchants to respond to such civil liability, and the more widespread, the sooner merchants will adopt procedures to improve their billing practices. There is a

law, and its waiting to be used!"

Consumer Reports replied on May 10, 1972 (31a-32a), asking the Plaintiff to keep it advised of his efforts to "invoke the $100 civil penalty on grounds of failure to itemize open-end purchases."

About that time, in May 1972 (and as is explained at 33a-36a), the Plaintiff commenced identification litigation against the issuers of four credit cards, three of whom were issuers of bank cards, and one (the Defendant) who was the issuer of a department store (two party) card. In view of the fact that banks have less control than department stores over the manner in which charge slips are filled in, the Plaintiff considered it important to have at least one department store among his defendants.

Furthermore, the Court is advised that in a deposition of the Plaintiff on March 15, 1973 [more than a year before the District Court questioned White's motive as a "private attorney general"[7], Central Charge explored the Plaintiff's

motivations carefully. Pages 37a-39a, consisting of pages 33 through 36 of that deposition, deal with the foregoing matters. [4/]

* * *

If White were prosecuting this and the other lawsuits for the purpose of generating attorney's fees, as Arlen contends, certainly he would have maintained records from the beginning to justify the fees claimed. But, as the District Court found (Pet. at 20a), White "did not keep time records because he was not focusing on supplying a justification for legal fees". White began to keep time records in January 1974 (and at that time estimated his prior time expended in this litigation) because Arlen failed to perform under a discovery stipulation (Pet. at 7) and began to waste the time of White and the District Court, and White decided to ask for compensation for all

4/ This argument and the supporting evidence has been in the record since April 26, 1974, and has never been refuted by Arlen.

of his time. And it was in mid-1974 that White asked the United States District Court for the District of Columbia for an attorney's fee in Lynn. Indeed, the only attorney's fee he has ever received under the Truth in Lending Act is the $100 in Lynn. And White respectfully submits that the only conclusion that can be drawn from the record is that he has been serving as a bona fide "private attorney general".

2. White Did Not Have Bona Fide Legal Representation in the District Court

In the asterisked note at 7, Arlen is misrepresenting White's argument. White did not move to alter or amend the judgment by increasing the $750 to $4,000, as stated. Steven A. Skalet, Esquire, who was supposed to be representing White's interest, argued in support of that motion:

> Even if the Court were to find that only 100 hours were reasonably necessary to pursue this claim, plaintiff submits that an award in the amount of $4,000.00 based upon the modest hourly rate of $40.00 an hour, would be reasonable under the circumstances for

plaintiff's pro se representation.

And when White took back the reins of this litigation (Pet. at 13-14), he did not state to the Court of Appeals that $6,000 would be "tentatively reasonable". He argued to the Court of Appeals:

> Since attorneys' fees are the property of litigants, and not their counsel (2/25/77 transcript, page 22), any disposition of an attorney's fee is a disposition of a portion of the litigation which requires the litigant's consent. The Plaintiff did nothing to hold Mr. Skalet out as having authority to settle any portion of this litigation without his (the Plaintiff's) knowledge and consent. And while an attorney has implied authority to take many actions on behalf of his client, he does not have implied authority to settle any portion of his client's litigation. DR 5-107 of the Code of Professional Responsibility provides, in this connection,
>
> "(A) Except with the consent of his client after full disclosure, a lawyer shall not:
> "(1) Accept compensation for his legal services from one other than his client."

The Plaintiff submits that the stipulation herein equated to an acceptance by Mr. Skalet of a legal fee from the Defendant.

There is an inherent conflict of interest in Mr. Skalet's action which the Plaintiff will demonstrate through figures. We will assume that a fee of $4,000, as stipulated by the

Defendant, which is about $45 per hour, is tentatively reasonable for Mr. Skalet's 90 hours. We will also assume that a fee of $6,000, which equates to about $31.50 per hour for the Plaintiff's 190 hours, is also tentatively reasonable. But if a court should find that the total resulting fee of $10,000 would be excessive under all of the circumstances, and if one part of that fee (the $4,000) is fixed by stipulation, then the court could reduce the total fee only by reducing the part which is not fixed by stipulation (the $6,000).

Certainly, the foregoing inherent conflict crossed Judge Harvey's mind when he said (oral opinion, page 7) /Pet. at 10a/,

> "The Plaintiff seeks $7,800 as a fee for his services performed at or prior to trial. With the $4,000 for the appeal, this would come to a total fee in this case of $11,800."

White has not been able to ascertain the details of the Stipulation either from Skalet or from Arlen's counsel, Joel M. Wolosky, Esquire. The Petition for Allowance of Attorney's Fees and Costs was prepared by Skalet and served on Arlen on December 16, 1976, and states,

> The parties have already agreed that counsel on appeal should receive an award of attorneys fees in the amount of $4,000.00 for his legal services following the decision in this Court.

But a copy of that Petition was not furnished to White (until after February 25, 1977).

Arlen, in its opposition filed January 31, 1977, denied that there was such an agreement, and said that $4,000 would be excessive because Skalet was retained by White after all

> . . . research of relevant legal issues had been completed by plaintiff acting pro se.

But -- although White's name and address continued to appear on the docket sheet to receive service copies of filings -- Arlen did not serve a copy of its opposition on White. As a result, White did not become aware of the fact that Skalet and Wolosky were actively negotiating a dollar amount for Skalet's services.

As appears from the copy of the Stipulation in White's petition at 25a, in the lower left corner, the Stipulation was prepared by Skalet's office. And as appears from the fact that "$4,000.00" is typed into the Stipulation, the amount had been agreed to when the Stipulation

was typed. Thus, when Skalet appeared in court on February 25, 1977, purportedly to obtain the best fee possible for White, the Stipulation for the $4,000 was an accomplished fact that required only the approval of the District Court. Skalet obviously would do and say nothing that would diminish his own image and enhance White's image to the District Court, and thus jeopardize the amount of the fee agreed with Wolosky.

And the District Court played along. Although the District Court inquired into the number of hours expended by Skalet and the hourly rate justifying the $4,000, it did not fix an allowable hourly rate or number of hours for White. Instead, the District Court sought to justify the obvious inadequacy of the $750 on the grounds (1) that White's performance as an attorney was poor (Pet. at 13a), and (2) that White's motive as a litigant was "suspect" (Pet. at 12a-13a). Contrary to Arlen's claim (at 8), the "sordid details" of White's relationship with Skalet are

relevant and material, first, because those details include Skalet's unholy alliance with Wolosky, and second, because that secret alliance resulted in White's failure to have bona fide legal representation at the hearing at which a purportedly "reasonable" attorney's fee was fixed for White's services. 5/

White's non-taxable expenses far exceed the $100 statutory penalty awarded him. Some of them would have been "overhead" expenses of his attorney, if he had one, which would have been recovered by his attorney as part of the fee; and some would have been and were recovered through out-of-pocket billings to White. Attorney-or-no, White

5/ Furthermore, in counter-stating the "Questions Presented" (at 2), Arlen says that White "expressly asked the court of appeals to examine the propriety of the district court's award of an attorney's fee for his pro se representation in this action". White could not have challenged the "propriety" of the award (as stated at 2 and 6) because he was not aggrieved by the fact that the District Court entered an award in his favor. Instead, White challenged the reasonableness of the award (as quoted at 6) because he was aggrieved by its inadequacy.

must be awarded an attorney's fee for his own services if a financial deficit is to be avoided and if private enforcement of the Truth in Lending is to be encouraged.

CONCLUSION

For the reasons stated, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit. The petitioner respectfully suggests that the Court summarily reverse that judgment and remand the case to the Court of Appeals with instructions to promptly decide the issues that are properly before the Court of Appeals respecting the reasonableness of the sum of money in question.

Respectfully submitted,

ALAN J. WHITE
8201 Snug Hill Lane
Potomac, MD 20854

Petitioner, in propria persona

LETTER PUBLISHED IN MAY 1972 CONSUMER REPORTS

Undescriptive billing

For many years, my wife and I have had charge accounts at a dozen or so retail establishments in our area, being billed monthly for purchases made since the last billing. In the past, we have always been provided, along with the bill, with copies of sales slips showing some sort of evidence that it was indeed we who made the purchases billed and that the prices quoted were correct. Usually such evidence takes the form of my signature or my wife's, or of an impression from a charge-plate kept in our possession.

But within the past month, two retail establishments (The Star Store of New Bedford and Jordan Marsh of Boston) have suddenly stopped enclosing sales-slip-carbons with their monthly bills. In the case of Jordan Marsh, the bad business practice is even worse: Not only does Jordan's fail to provide evidence of purchase, but it now doesn't even itemize bills. That is, my latest (and last) bill had a single entry for "Girl's Apparel" in the amount of $55. My wife bought two or three things for my daughter some time ago, but can't remember the prices; all she knows is that we simply couldn't afford to spend that much for a single item of clothing for a rapidly-growing child. How, therefore, am I to know that a wrong price hasn't been quoted, or that somebody else hasn't charged a purchase to our accounts? If I refused to pay, alleging that the purchases weren't demonstrably made, no doubt the stores in question could shoot me down by producing their copies of the evidence; so I've paid but cancelled both accounts, resolving not to shop at either store again, even for cash.

Shouldn't retailers itemize each separate item when billing? There oughta be a law!
Marion, Mass. R.H.R.

CONSUMERS UNION'S REPLY

The trend is nationwide. In creditor circles the old-fashioned practice of enclosing sales slips and itemizing them briefly on the bill is called country-club billing, implying some sort of luxury. The enigmatic practice of listing only a classification such as "furniture" or "girl's apparel" -- or, worse, a code number referring to a list of departments on the back of the bill -- is misnamed "descriptive billing." Stores and credit-card companies make the switch in billing methods in the name of efficiency or computerization. The Truth-in-Lending Act lets them get away with it. Senator William Proxmire's Fair Credit Billing Act would have required monthly bills to include a brief identification of each purchase but not a copy of the sales slip. This legislation, which also deals with many other charge-account problems, was severely weakened in committee before reaching the Senate floor late in March.

2700 Calgary Avenue
Kensington, Md. 20795
April 25, 1972

Consumer Reports
P.O. Box 1111
Mt. Vernon, N.Y. 10550

Gentlemen:

Your apathetic reply to R.H.R.'s complaint on undescriptive billing (Consumer Reports, May 1972) was unbecoming to C.U. Contrary to your assertion, there is a law!

The Truth in Lending Act requires periodic billing statements to contain "a brief identification (unless previously furnished) of the goods or services purchased." Consequently, if R.H.R. or his wife received an itemized sales slip at the time of their purchase, the merchant's billing statement to them did not have to identify the goods or services purchased. In that event, if they did not retain their sales slip, they have no one to blame but themselves. [*/]

But where identification has not been previously furnished, the Federal Reserve Board's Regulation Z permits identification to be made "on a separate statement or separate slips which shall accompany the periodic statement and identify each charge and credit" or, alternatively, "by symbol relating to an identification list printed on the statement." Its Regulation Z pamphlet suggests that "a listing of all departments and a brief description of the merchandise sold in each" would be sufficient identification, such as "Men's Accessories (Shirts, Ties, Socks, etc.)" and

*/ White's position changed in this respect after reading the legislative history.

"Men's Clothing (Suits, Sportcoats, Outerwear, etc.)." Although the pamphlet does not so state, it can be argued from the Federal Reserve Board's example that the identification mentioned by R.H.R., "'Girl's Apparel'", without more, would be insufficient for compliance, particularly since the following appears in the same pamphlet:

> "Q: What sort of information must accompany a monthly statement?
>
> "A: Where applicable, you must give customers this information: . . . 2. The amount and date of each extension of credit and identification of <u>each item bought</u> /Emphasis added/. . . .

The Truth in Lending Act also provides that "any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required . . . to be disclosed to that person is liable to that person" in a minimum amount of $100 plus "in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court." Although small claims courts should be ideal for enforcing such liability, the judges of such courts may require education in this field, and such task is better performed by an attorney than attempted by a layman.

I would venture that in the final analysis an identification would comply with the Truth in Lending Act if it would cause an ordinary prudent person to recall the item or items purchased and, consequently, I would assume that sufficiency of identification would vary from merchant to merchant and according to price and other factors. And I would like to thank R.H.R. and C.U., for together you caused me to review my billing statements and find numerous charge slips either containing no identification whatsoever or identifying purchases as "merchandise", for which

I intend to seek redress. You also caused me to realize that the sooner consumers cause merchants to respond to such civil liability, and the more widespread, the sooner merchants will adopt procedures to improve their billing practices. There is a law, and it's waiting to be used!

Very truly yours,

/s/Alan J. White
Alan J. White

CONSUMERS UNION LETTERHEAD

May 10, 1972

Mr. Alan J. White
2700 Calgary Avenue
Kensington, Md. 20795

Dear Mr. White:

I'm sorry you found our comment to R.H.R.'s letter apathetic. As it happens, I serve as a consumer member of the Federal Reserve Board's Truth in Lending Advisory Committee. This has given me quite a good opportunity to become familiar with Regulation Z, its intentions and its interpretations. Senator Proxmire, as a sponsor of the legislation, also has some familiarity with it. He and his staff believe, as we do, that the law needs strengthening in several particulars, one of which is § 127(b)(2) requiring periodic disclosure in open-end credit of "The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification (unless previously furnished) of the goods or services purchased." As the very least, the creditor should have to itemize the charges.

Much trouble would be saved the public, and much money as well, I think, if the bill had to include sales vouchers. Many people have written to us of their experience with gasoline company credit billings. If their experiences mean anything, it is not uncommon for a filling station attendant to run off two bills with a customer's credit card. The second bill is forged to the attendant's benefit. On the monthly bill the forged charge looks like just another purchase of gasoline to someone who is not alert and who has not been careful to preserve all of his

purchase receipts. Mis-billings of general credit card accounts are also reported. Enclosure of voucher copies for each purchase makes possible the relatively easy detection of false billings.

All of that having been said, we will be very interested in any legal effort you might attempt to invoke the $100 civil penalty on grounds of failure to itemize open-end purchases. Would you be kind enought to keep us informed?

With best wishes,

/s/ Robert J. Klein
Robert J. Klein
Economics Editor

2700 Calgary Avenue
Kensington, Md. 20795
September 8, 1972

Mr. Robert J. Klein
Economics Editor
Consumers Union
256 Washington Street
Mt. Vernon, New York 10550

Dear Mr. Klein:

In your letter dated May 10, 1972, you asked me to keep you informed of my efforts to invoke the civil liability provision of the Truth in Lending Act in connection with failures to identify purchases charged under open end credit plans. My failure to respond earlier, as I had fully intended, was the result of over-activity rather than inaction.

I filed my first such suit on May 2, 1972, against Central Charge Service, Inc., a subsidiary of Riggs National Bank, in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, claiming that identification of goods as "merchandise" in one instance, and "general merchandise" in another, was insufficient. I filed the suit one year plus several days after the date of the billing statement containing the charges, so that I could safely testify that I filed the suit within one year after its receipt. Expectedly, Central Charge claimed that the one year period ran from the date of the purchase or the date of the billing statement -- but I now have a written opinion to the effect that it runs from the date of receipt of the billing statement. And against Central Charge's contention that the obligation to identify was that of the merchants who prepared the sales-charge slips, the opinion holds

that it was the obligation of Central Charge, the open end creditor. But the opinion also holds that the identification was sufficient because it was supplemented by cash register tape symbols, in one instance, and by the name of a department, in the other. The Court refused to give me permission to file a brief, so I sought review in the District of Columbia Court of Appeals. That was declined, and I sought reconsideration -- which is still pending.

In the meanwhile I developed a form of Complaint, reviewed my billing statements for the preceding twelve months, and filed lawsuits in Federal district courts against the principal offendors, namely, Central Charge Service, Inc. (13 additional identification counts), Virginia National Bank (Master Charge, 11 counts), Suburban Trust Company (BankAmericard, 20 counts) and Arlen Realty and Development Corp. (Korvettes, 12 counts). These kept me so busy that when Virginia National Bank recently offered to settle for $100 per count plus my costs, I decided to accept. A copy of the Complaint in that action is enclosed for your information.

I have concluded from my experiences thus far that a layman should not attempt such an action alone, not even in a small claims court. I have also concluded that an action under Section 130(a) is extraordinarily easy to prove if one has retained his sales-charge slips and billing statement. And I have concluded that such an action is financially impracticable to defend -- for even if the Section 130(c) hurdle of "intent" is proved by a preponderance (not greater weight) of the evidence, a defending bank may have to prove not only that it maintained procedures, but that other banks also maintained procedures.

I have encountered defenses based on negligence and breach of contract principles -- that I should have ascertained that the sales-charge slips were properly prepared. I think that such defense should fail, first, because the statutory defenses are exclusive, and second, because the concept of creditor responsibility underlies the Truth in Lending Act.

Aside from the foregoing, promptly after Suburban Trust Company was served with process, it informed me that it cancelled my BankAmericards. Since I have not been refused credit although I continued to use them, I suspect that in view of the Fair Credit Reporting Act it has not cancelled my cards but, instead, will refuse to renew them in October 1972. And during settlement negotiations, Virginia National Bank informed me that it would not renew my Master Charge cards in February 1973. Since my accounts have been perfect, I believe that such actions are unlawful insofar as they discourage utilization of the civil liability provision. I asked Mr. Garwood [of the Federal Reserve Board], whom I'm sure you know, for an amendment of Regulation Z to prevent such cancellation or non-renewals, but he informed me that in staff's opinion it would be outside the scope of Section 105.

Since you are a member of the Federal Reserve Board's Truth in Lending Advisory Committee, I'm wondering whether you would be inclined to take this up with the Board. Retribution must be prohibited if Section 130(a) is to become an effective enforcement vehicle. And absent prompt assistance from the Board, I'm inclined to tie down the reasons for cancellation or non-renewal through discovery proceedings and bring a motion in court for ancilliary relief in the form of a permanent

injunction.

Very truly yours,

/s/Alan J. White
Alan J. White

EXCERPT FROM MARCH 15, 1973, DEPOSITION OF WHITE

Q At the time that you went to the Giant market on April 17, 1971, I want to explore with you your then familiarity with the provisions of the Truth in Lending Act.

A I object to this line of questions because I don't think my familiarity has anything to do with the litigation. I will answer the question.

Q Would you generally describe the nature of your familiarity as of April 17, 1971.

A It is extremely --

Q Let me ask you a precise question. As of the date you walked into the Giant Food store on April 17, 1971, were you of the view that the statute, meaning the Truth in Lending Act and the regulations promulgated in connection with the Act, required the merchants to give a brief identification of the goods and services purchased on the charge slip unless it was furnished by some alternative means?

A No. I had never been of that view.

Q What was your view with respect to identification of goods and services?

A Let me say this: The whole idea of identification giving rise to a cause of action did not occur to me until some time in the early part of 1972, shortly before I filed these lawsuits against Central Charge and against others. Now --

Q How did that occur to you?

A Okay. Something that I read in -- I read. I can't help it. You make a face. I will just say for the record that it is a coincidence that both ideas came to me through reading, but I do read. It was something that I had read in Consumers Report, and I can't give you an issue on that, but, in effect, it was one of those letters to the editor type of items where a person had complained that they didn't know that [whether] certain charges were there [theirs] because slips weren't enclosed with billing statements. I forget precisely what the gist of the reply was, but I recall that I disagreed with the Consumers Report reply and having at that time -- and I will call it March '72 just to put a date on it. I am not sure if that is so. Somehow I had my Truth in Lending Act material at home when I read that because of my prior litigation and I went to my material and I decided that the response that they had given in this answer was wrong. At that time, something had been triggered from my oral argument before the Court of Appeals.

Q In the Wheaton case?

A Yes. What I read and what I looked up on that particular day -- and I recall it was a Saturday at home as I was reading it -- something that I put together triggered something that occurred in the Court of Appeals in the Wheaton case. What had happened was that the Court of Appeals made me, while I was standing on my feet arguing, go down Section 127(b) of the Truth in Lending Act and asked me number by number [,] all those numbered items there, "Read this out loud and tell me whether you claim a violation of this," of that, and so forth, and I did. When I got to No. 2, somehow I stood there as if this was the first time that I had ever read that. Do you know how it is? Something dawns

on you for the first time. It was a traumatic experience. When I read this article in the Consumers Report and looked up some stuff about the Truth in Lending Act, I decided that identification was an area of claim. Okay? When you ask me whether in April 1971 I had that feeling, the answer is no, because I had never thought of identification as an area of claim in April 1971. I hope that is a fair answer to you.

Q You argued that case before the District of Columbia Court of Appeals sometime in the late fall of 1971; is that not correct? The opinion was dated December 29, 1971.

A Doesn't the argument /opinion/ state the date? It says it was argued October 29, 1971. I accept that as an accurate date. When I said I read this in the spring of 1972 in the Consumers Report, you can get the context that there must have been about a six-month difference in there.